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Tesla, Inc. and Elon Musk

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

KALMAN ISAACS, individually and on behalf
of all others similar situated,

Plaintiff,

v.

ELON MUSK and TESLA, INC.,

Defendants.

Case No.: 3:18-cv-04865-EMC

**STIPULATION AND [PROPOSED]
ORDER EXTENDING TIME FOR
DEFENDANTS TO RESPOND TO
COMPLAINTS AND CONTINUING
CASE MANAGEMENT CONFERENCE
AND ASSOCIATED DEADLINES**

(Civil L.R. 6-1(a) and 16-2)

Judge: The Honorable Edward M. Chen

Date Action Filed: August 10, 2018

WILLIAM CHAMBERLAIN, on behalf of
himself and all other similarly situated

Plaintiff,

v.

TESLA, INC. and ELON MUSK,

Defendants.

Case No.: 3:18-cv-04876-EMC

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JOHN YEAGER, Individually and on Behalf of
All Others Similarly Situated,

Plaintiff,

v.

TESLA, INC. and ELON MUSK,

Defendants.

Case No.: 3:18-cv-04912-EMC

CARLOS MAIA, on behalf of himself and all
other similarly situated,

Plaintiff,

v.

TESLA, INC. and ELON MUSK,

Defendants.

Case No.: 3:18-cv-04939-EMC

KEWAL DUA, Individually and on Behalf of All
Others Similarly Situated,

Plaintiff,

v.

TESLA, INC. and ELON MUSK,

Defendants.

Case No.: 3:18-cv-04948-EMC

JOSHUA HORWITZ, Individually and on Behalf
of All Others Similarly Situated,

Plaintiff,

v.

TESLA, INC. and ELON R. MUSK,

Defendants.

Case No.: 3:18-cv-05258-EMC

1 ANDREW E. LEFT, Individually and on Behalf
2 of All Other Similarly Situated,

3 Plaintiff,

4 v.

5 TESLA, INC., and ELON R. MUSK,

6 Defendants.

Case No.: 3:18-cv-05463-EMC

7 ZHI XING FAN, Individually and On Behalf of
8 All Others Similarly Situated,

9 Plaintiff,

10 v.

11 TESLA, INC., and ELON R. MUSK,

12 Defendants.

Case No.: 3:18-cv-05470-EMC

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1 WHEREAS, on September 12, 2018, the Court issued an Order (Dkt. No. 23) deeming
 2 this case and seven additional proposed class actions, each alleging violations of the federal
 3 securities laws against defendants Tesla, Inc. and Elon Musk (collectively, “Defendants”),
 4 “related cases” within the meaning of Northern District of California Civil Local Rule (“Civil
 5 L.R.”) 3-12(a) (together, the “Related Securities Actions”);

6 WHEREAS, on August 14, 2018, the Court issued an Initial Case Management
 7 Scheduling Order (Dkt. No. 4) setting the following deadlines in this case, and subsequently
 8 issued orders setting identical schedules in each of the Related Securities Actions:

- 9 1. October 18, 2018 for the parties to comply with certain requirements under the
 10 Federal Rules of Civil Procedure and Alternative Dispute Resolution (“ADR”)
 11 Local Rules regarding initial disclosures, early settlement, ADR process selection,
 12 and discovery planning;
- 12 2. November 1, 2018 for the parties to complete initial disclosures or state objection
 13 in Rule 26(f) Report, file Joint Case Management Statement, and file/serve Rule
 14 26(f) Report; and
- 15 3. November 8, 2018 at 9:30 a.m. for an Initial Case Management (subsequently
 16 advanced to November 5, 2018 at 10:00 a.m. due to the Court’s unavailability);

17 WHEREAS, the Related Securities Actions are subject to the requirements of the Private
 18 Securities Litigation Reform Act of 1995, Pub. L. No. 104-67, 109 Stat. 737 (1995) (the “Reform
 19 Act”), which sets forth specialized procedures for the administration of securities class actions;

20 WHEREAS, the Reform Act provides for the appointment of a lead plaintiff to act on
 21 behalf of the purported class, and further provides that the appointment of lead plaintiff shall not
 22 be made until after a decision on a motion to consolidate is rendered (15 U.S.C. § 78u-4
 23 (a)(3)(B)(ii));

24 WHEREAS, notice of this action was provided by plaintiff in the first-filed case on August
 25 10, 2018, and the parties in the Related Securities Actions expect that a motion to consolidate and
 26 for appointment of a lead plaintiff and lead counsel will be filed (the “Lead Plaintiff Motion”) on
 27 or about October 9, 2018;

28 WHEREAS, the approval of lead counsel will follow the Court’s decision on the Lead
 Plaintiff Motion;

1 WHEREAS, thereafter, the parties expect the Court to set a schedule for the filing of an
2 amended or consolidated complaint by Lead Plaintiff;

3 WHEREAS, Defendants anticipate filing motion(s) to dismiss in response to Lead
4 Plaintiff's amended or consolidated complaint and that the parties will submit a briefing schedule
5 to the Court in connection with any such motion(s);

6 WHEREAS, because the special procedures specified in the Reform Act contemplate (i)
7 the consolidation of similar actions, (ii) appointment of Lead Plaintiff, and (iii) the filing of a
8 complaint by Lead Plaintiff, requiring Defendants to respond at this time to the existing
9 complaints in the Related Securities Actions would be contrary to the Reform Act and result in
10 the needless expenditure of private and judicial resources;

11 WHEREAS, pursuant to the Reform Act, all discovery and other proceedings shall be
12 stayed during the pendency of any motion to dismiss, unless the court finds upon the motion of
13 any party that particularized discovery is necessary to preserve evidence or to prevent undue
14 prejudice to that party (15 U.S.C. § 78u-4(b)(3)(B));

15 WHEREAS, counsel for the parties in the Related Securities Actions respectfully submit
16 that because the pleadings are not yet set, and because discovery is stayed pending any motion(s)
17 to dismiss, good cause exists to vacate the existing November 5, 2018 Initial Case Management
18 Conference and associated deadlines until such time as the Court has the opportunity to rule on
19 the appointment of Lead Plaintiff and its counsel and any motion(s) to dismiss;

20 WHEREAS, this stipulation is entered without prejudice to any position the parties in the
21 Related Securities Actions may take with respect to the Lead Plaintiff process under the Reform
22 Act, including whether appointment of one or more lead plaintiffs is appropriate, or in connection
23 with consolidation of the Related Securities Actions;

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IT IS ACCORDINGLY STIPULATED, pursuant to Civil L.R. 7-12, by and between the undersigned counsel for the parties in each of the Related Securities Actions, that:

- i. Pursuant to Civil L.R. 6-1(a), the time for Defendants to answer, move or otherwise respond to the complaints in the Related Securities Actions is extended until after the appointment of a Lead Plaintiff and lead counsel, at which time the parties shall meet and confer and submit to the Court a mutually agreeable schedule for the filing of an amended or consolidated complaint and Defendants' responses thereto;
- ii. Pursuant to Civil L.R. 16-2, the Initial Case Management Conference scheduled for November 5, 2018 in each of the Related Cases be vacated, along with any associated deadlines under the Federal Rules of Civil Procedure and Civil Local Rules or by Court Order, to be reset for a date that is 30 days after the Court rules on Defendants' anticipated motion(s) to dismiss Lead Plaintiff's complaint, or such other date as the Court shall determine to be appropriate; and
- iii. All associated ADR Program deadlines likewise be deferred.

Dated: September 26, 2018

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Dated: September 26, 2018

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Dated: September 26, 2018

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Dated: September 26, 2018

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1 Dated: September 26, 2018

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2 By: /s/ Jennifer Pafiti
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6 Attorneys for Plaintiff Zhi Xing Fan

7 Pursuant to Local Rule No. 5-1(i)(3), all signatories concur in filing this stipulation.

8 Dated: September 26, 2018

By: /s/ Jennifer C. Bretan
Jennifer C. Bretan

9 ***

10
11 **[PROPOSED] ORDER**

12 PURSUANT TO STIPULATION, IT IS SO ORDERED.

13 Dated: September __, 2018

14 Hon. Edward M. Chen
United States District Court Judge

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